

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF MONTANA,
2 IN AND FOR THE COUNTY OF LEWIS & CLARK

3 * * * * *

4 THE MONTANA WILDERNESS ASSOCIATION,)
5 and THE GALLATIN SPORTSMAN ASSOCIA-)
6 TION, INC.,)

7 Plaintiffs,)

8 -vs-)

9 THE BOARD OF HEALTH AND ENVIRON-)
10 MENTAL SCIENCES of the State of)
11 Montana; THE DEPARTMENT OF HEALTH)
12 AND ENVIRONMENTAL SCIENCES of the)
State of Montana,)

13 Defendants.)
14 -----)

No. 38092

15 COMPLAINT

16 I.

17 Plaintiff, Montana Wilderness Association, is a non-
18 profit corporation organized and operating under the Laws of the
19 State of Montana, dedicated to the promotion of wilderness areas
20 and dedicated to advancing environmental causes generally. There
21 are approximately seven hundred fifty (750) residents of the
22 State of Montana who are members of the Montana Wilderness
23 Association and approximately seventy-five (75) of said members
24 live in the vicinity of Bozeman, Montana. Individual members of
25 the Montana Wilderness Association have appeared and testified
26 at wilderness hearings concerning the wilderness proposals on
27 lands in the vicinity of the proposed Beaver Creek South Sub-
28 division described hereinafter.

29 Individual members of the Montana Wilderness Association
30 make substantial use of the public lands in the vicinity of the
31 proposed Beaver Creek South Subdivision hereinafter described.

32 II.

The Gallatin Sportsman Association is a local conserva-
tion organization, a non-profit corporation organized under the

1 laws of the State of Montana. Gallatin Sportsmen has approxi-
2 mately one hundred sixty-five (165) members residing in the
3 State of Montana, primarily in the Bozeman area.

4 Gallatin Sportsmen is organized for charitable, educa-
5 tional and scientific purposes, which include the conservation
6 of wildlife, wildlife habitat, and other natural resources.
7 Gallatin Sportsmen's concern for and involvement in the pre-
8 servation and enhancement of wildlife habitat and other natural
9 resources is well known. Gallatin Sportsmen submitted comments
10 on the draft environmental impact statement of the Beaver Creek
11 South Subdivision. A large number of members of Gallatin
12 Sportsmen hunt and fish in the area of the Beaver Creek South
13 Subdivision and such uses would be adversely affected if the
14 Board of Health and the Department of Health allow the removal
15 of the sanitary restrictions on Beaver Creek South Subdivision.

16 III.

17 The Board of Health and Environmental sciences of the
18 State of Montana (hereinafter referred to as Board of Health)
19 is the lawful board charged under Montana law with the duty of
20 enforcing the Montana laws on environmental policy and water
21 pollution, §69-5001, R.C.M. (1947), et. seq., §69-4801, R.C.M.
22 (1947), et. seq., and §69-6501, R.C.M. (1947), et. seq.

23 IV.

24 The Department of Health and Environmental Sciences of
25 the State of Montana (hereinafter referred to as the Department
26 of Health) is the agency charged with the duty of administering
27 the Montana laws above-mentioned in Paragraph III.

28 V.

29 Beaver Creek South is a proposed subdivision development
30 located in the Gallatin Canyon about fifty (50) miles south of
31 Bozeman, Montana, adjacent to U. S. 191 and Beaver Creek.
32

1 FIRST CLAIM

2 VI.

3 In the Spring of 1974, a plat concerning said Beaver
4 Creek South Subdivision was submitted to the Department of
5 Health for said agency's approval and for said agency's order to
6 remove the sanitary restrictions.

7 VII.

8 On or about April 8, 1974, the Department of Health
9 issued a draft environmental impact statement outlining a
10 proposal to develop approximately seventy-two (72) lots for
11 single and multi-family residences and approximately seven and
12 one-half (7 1/2) acres along U. S. 191 for a neighborhood
13 commercial area.

14 VIII.

15 On or about June 26, 1974, the Department of Health
16 released what purports to be a final environmental impact state-
17 ment on the development, consisting primarily of the comments
18 submitted by parties reviewing the draft environmental impact
19 statement. Said final describes the same proposal offered in
20 the draft environmental impact statement.

21 IX.

22 Upon information and belief, the Board of Health and/or
23 the Department of Health will on July 26, 1974, or very soon
24 thereafter remove the sanitary restrictions on the proposed
25 subdivision.

26 X.

27 The above-mentioned purported final environmental impact
28 statement does not comply with either the procedural or sub-
29 stantive requirements of Section 69-6501, et. seq. (Montana
30 Environmental Policy Act), and therefore, the purported final
31 environmental impact statement is inadequate at law.
32

1 XI.

2 The Department and Board are obligated to prepare a
3 final environmental impact statement which meets the require-
4 ments of Section 69-6501, et. seq., prior to approval of the
5 lifting of the sanitary restrictions on a subdivision of the
6 magnitude of Beaver Creek South.

7 XII.

8 The Department and Board, in preparing the above-mention-
9 ed purported final environmental impact statement, failed to
10 comply with the requirements of the Montana law on sanitation in
11 subdivisions, Section 69-5001, Et. seq., Revised Codes of Montana
12 (1947), and failed to comply with the regulations of the
13 Department of Health.

14 XIII.

15 The Department and Board, in preparing the above-mention-
16 ed purported environmental impact statement failed to comply
17 with the guidelines of the Environmental Quality Council and
18 are obligated to do so prior to approval of the lifting of the
19 sanitary restrictions on a subdivision of the magnitude of
20 Beaver Creek South.

21 XIV.

22 The removing of said sanitary restrictions by said
23 Board of Health will, if consumated, violate Montana law because
24 said removal will allow construction and pollution at the site
25 of said Beaver Creek South Subdivision without adequate environ-
26 mental and legal safeguards and protections.

27 XV.

28 If said sanitary restrictions are removed, plain-
29 tiffs and individual members of plaintiff organizations will
30 be irreparably injured by the resultant pollution and degrada-
31 tion of the waters in the area and by the pollution and degrada-
32 tion of quality of the nearby National Forest.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

XVI.

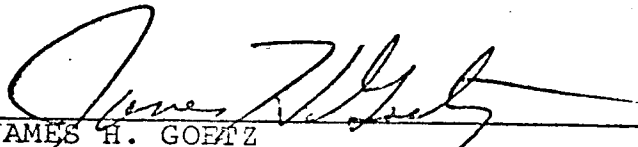
Plaintiffs have no adequate remedy at law or otherwise for the harm or damage threatened to be done by defendants, Board of Health and Department of Health.

XVII.

In failing to comply with the above-cited laws of the State of Montana, the Board of Health and Department of Health and agents thereof have acted willfully and deliberately disregarding of said laws.


WHEREFORE Plaintiffs pray:

- 1. For a permanent injunction enjoining and restraining the Board of Health and Department of Health from removing or authorizing the removal of the sanitary restrictions on Beaver Creek South Subdivision.
- 2. Costs of this action.
- 3. Attorneys fees.
- 4. For such other and further relief as to the Court appears proper.


JAMES H. GOETZ
15 South Tracy, Suite 8
Bozeman, Montana 59715
Attorney for Plaintiffs

STATE OF MONTANA)
 : ss.
County of Gallatin)

I, Rick Applegate, as member of plaintiff, Montana Wilderness Association, swear and affirm that I have read and know the contents of this Complaint and I know the same to be true and accurate except for those allegations made on information and belief, and those I believe to be true.


Rick Applegate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

SUBSCRIBED AND SWORN to before me this 7th day of July,
1974.,

James S. Connel
Notary Public for the State of Montana
Residing at: Helena, Mt.
My commission expires: 10/30/78